

1                   IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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3       AECOM ENERGY AND CONSTRUCTION,            )

4       INC.,    ) Case No.

5                               Plaintiff,                        ) 20-2016C

6                                       vs.                         )

7       THE UNITED STATES OF AMERICA,                )

8                               Defendant.                        )

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12                                       Via Teleconference

13                                       Thursday, April 18, 2024

14                                       10:00 a.m.

15                                       Status Conference

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20                                       BEFORE: THE HONORABLE MOLLY R. SILFEN

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25       Transcribed by: Elizabeth M. Farrell, CERT

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1 A P P E A R A N C E S

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22 ALSO PRESENT:

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24

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1 P R O C E E D I N G S

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3 (Proceedings were called to order.)

4 THE CLERK: The United States Court of Claims  
5 is now in session, the Honorable Molly R. Silfen  
6 presiding.

7 Can we have counsel please introduce yourselves  
8 for the record, beginning with the Plaintiff and then  
9 counsel for the Defendant, and then we can have agency  
10 counsel as well.

11 MR. SPETH: Sure, Charles Speth from WilmerHale  
12 for URS.

13 MR. SWABB: Erik Swabb from WilmerHale for URS.

14 MR. OH: And for the United States, Meen Geu  
15 Oh, and with us on the line virtually is Ioana Meyer, and  
16 Sky Smith is here for the Department of Energy.

17 THE COURT: Okay. Thanks. So, yeah, so we can  
18 get started. It's -- and I guess it's still captioned  
19 AECOM Energy and Construction vs. the United States, and  
20 it's Number 20-216.

21 So in the latest status report, the parties  
22 requested this status conference just to talk about the  
23 latest developments and discovery disputes. So I'll just  
24 -- from what I gather, the discovery process is  
25 progressing, the Government hasn't been able to complete

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1 the privilege review process on time, and the parties now  
2 agree that July 3rd -- that the July 3rd deadline is no  
3 longer feasible to complete fact discovery, but can't  
4 agree on the best way to proceed or on a new schedule.

5 And it sounds like URS would like me to order  
6 the Government to complete the privilege review and  
7 production by May 15th and is willing to reasonably limit  
8 the scope of the review and production. The Government  
9 thinks May 15th is not feasible because of the magnitude  
10 of the case and the volume of documents and that it will  
11 take at least several more months to complete the review  
12 process given the way things have been going.

13 And then I gather the Government's offering two  
14 options. One is a metadata only production that allows  
15 URS to choose some documents the Government would review  
16 more thoroughly and that URS doesn't like that approach.

17 The second one is some category or custodian  
18 sort of singling groups of people. URS seems more  
19 amenable to that, but I guess there aren't any specific  
20 proposals yet. And then both parties want 145 days from  
21 whenever the production is complete to end -- to close  
22 that discovery period. And then does that all sound  
23 correct?

24 MR. SPETH: That's generally correct. Can I  
25 expound on one thing?

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1 THE COURT: Of course.

2 MR. OH: Which is I think in the spirit of  
3 reciprocity, we wouldn't like categorically oppose a  
4 document-by-document review of the 50,000 documents  
5 currently withheld on privilege. It just, in our mind,  
6 couldn't be accomplished in any reasonable time frame.  
7 That's the big concern. So I think the reason why we  
8 approached URS with alternatives was if we want to  
9 fashion a reasonable timeline, it has to come with some  
10 sort of limitation. So that's why the alternatives were  
11 proposed as, okay, if we went to sort of truncate the  
12 period, we can do that. But it would have to be by some  
13 sort of stipulation of some kind, so we proposed several  
14 options.

15 Obviously, Judge Silfen, you know, the metadata  
16 only log was -- you know, we weren't agreeable to that,  
17 but, you know, the category-based exclusions was one  
18 option that was on the table. Mr. Speth and I discussed  
19 one yesterday. It didn't seem like we could reach an  
20 agreement on that. So I guess it's really sort of two  
21 options on the table. It's either the full thing, but  
22 it's going to take a long time, and then if it's a  
23 shorter time, we can do it, but it would have to come  
24 with some sort of limitation. So that's the general  
25 categorical buckets.

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1 THE COURT: Okay. URS?

2 MR. SPETH: Your Honor, we just think the  
3 Government needs a firm date. I mean, we've reviewed  
4 putting -- either for privilege or responsiveness, we've  
5 reviewed 550,000 documents in this case. We started our  
6 review back in the spring of 2022. I appreciate that  
7 there are 50,000 documents. Some of those, maybe the  
8 Government can narrow the privilege -- those are just  
9 documents that --

10 (Pause in the proceedings.)

11 MR. SPETH: Those are documents that are --  
12 sorry, should I continue?

13 THE COURT: Yes, please. Just ignore that.

14 MR. SPETH: Okay. Those are documents that are  
15 identified as responsive through the Government's TAR  
16 review process, but are hitting on some -- you know, some  
17 key word.

18 THE COURT: Mm-hmm.

19 MR. SPETH: Or I'm not sure, maybe they are  
20 also potentially tied to a custodian who may have  
21 privilege documents.

22 THE COURT: Mm-hmm.

23 MR. SPETH: So there may be ways that the  
24 Government can narrow the keywords that are catching  
25 those and reduce some of them just with a clawback.

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1 They've done that previously. There is a clawback in the  
2 case, so if they inadvertently produce a privileged  
3 document, they can claw it back. So they may be able to  
4 limit it.

5 And 50,000 just isn't that many documents. I  
6 mean, if you're looking at, you know, 20 documents an  
7 hour with a -- you know, you can -- with -- at times,  
8 we've had 25 reviewers on the case. I mean, that's a  
9 matter of weeks, not a matter of months to accomplish  
10 that is our position. And they may -- the Government --  
11 it's already been a very long time and, you know, our  
12 position is they probably do need a firm deadline to, you  
13 know, marshal the resources internally to get this done.

14 THE COURT: Okay. All right. So I guess I  
15 have a few questions for both of you. So for Mr. Oh,  
16 have you asked agency counsel to help with the privilege  
17 (inaudible) process?

18 MR. OH: Yes. So for vast portions of the  
19 review, at least since I got on the case in November,  
20 they have been sort of allowing us on the -- four other  
21 DOE attorneys other than my agency counsel, Mr. Smith,  
22 which we greatly appreciate. We can't get 25. Like we  
23 just don't have that. I've had to ask for a contract  
24 review team. It's just not within our budget constraints  
25 at the moment.

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1           So there are presently four DOJ attorneys  
2 assigned to the case. We have, at various points, done  
3 review, but it's always been sort of on an ad hoc basis  
4 because we maintain our own independent case docket. So  
5 it's not like once you're assigned to this case, you  
6 don't get anything else. It's sort of you're juggling  
7 everything else. So it's been difficult, I think, on the  
8 resource front and so I understand, you know, Mr. Speth  
9 can get 25 reviewers on a case like this, but we just  
10 can't. Believe me, Judge Silfen, I have tried.

11           The only reason I called Mr. Speth on April 5th  
12 was it has sort of been the looming challenge ever since  
13 I took over the case, is we had to get out these  
14 productions and then we had two million documents  
15 recalled on privilege. And the first thing that we did  
16 was we did the keyword reduction, not because we felt  
17 comfortable doing it, because that was the only way to  
18 tackle, you know, withholdings of that size.

19           So, you know, prior to -- leading into, you  
20 know, this deadline of January 10th, we started this  
21 conversation where I wanted to be as transparent as  
22 possible with Mr. Speth about what we had to do. I told  
23 him it was our challenge. I think I might have even said  
24 I have no idea how I'm going to get this done, but here's  
25 my plan. We're going to do these very large privilege



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1 kickouts. We're going to use TAR. We're going to get  
2 people on board. We're going to try to get it done as  
3 fast as possible.

4           Leading into April 5th, when I realized it just  
5 wasn't going to happen on the timetable that, you know,  
6 that was set by the Court, I approached him with, you  
7 know, these limitation proposals because I didn't see it  
8 getting done otherwise. So I'm sort of -- I think I was  
9 hopeful at first and, at some point, it was just -- you  
10 know, unless we get a stipulation, we can't do it. You  
11 know, this status conference is, I think, sort of my call  
12 as to maybe we should just go to the Court. I didn't  
13 want it to be a contested thing where we're filing  
14 motions and there's contested briefing. I think  
15 everyone's busy, so I thought this was sort of the  
16 easiest way to get ahead of it.

17           And, again, I think I'll put this in two  
18 buckets. We can do the 50,000-document review. DOE says  
19 it can continue to cycle in five new attorneys, including  
20 my agency counsel, on loan, but if we're going to do that  
21 process, it's going to take months, absent some sort of  
22 limitation.

23           THE COURT: I guess I'm a little puzzled about  
24 the -- like 50,000 doesn't strike me as that many. I  
25 mean, I know it's -- you know, it takes a lot of people,

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1 but doesn't DOJ sort of routinely get document review  
2 projects of that size? I'm just trying to --

3 MR. OH: I think if it were a straight-up  
4 review, that could be one thing because we could do TAR  
5 on that.

6 THE COURT: Mm-hmm.

7 MR. OH: But this is a set that we've already  
8 had TAR run on. Now, we're doing privilege review and  
9 privilege review is much more scrutinized and exacting.  
10 So I think when Mr. Speth says 20 documents an hour,  
11 that's actually a pretty fair estimate. Did you say 20  
12 documents an hour?

13 MR. SPETH: I did. Sorry.

14 MR. OH: Yeah, yeah, 20 documents, that's  
15 actually a pretty fair estimate we're envisioning here.  
16 So what we've done is, you know, we're doing the math in  
17 our head. We have five, maybe six reviewers at a time,  
18 again, with other case obligations doing about four hours  
19 of review a day over a series of months. And to get  
20 through that 50,000 documents is probably going to take  
21 us five months.

22 THE COURT: Okay. Okay. And then one other  
23 question for you, Mr. Oh. So I'm curious about the  
24 metadata being -- even though it sounds like that's kind  
25 of a nonstarter, but URS says, in general, that the

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1 position is novel in civil litigation, and I can't say  
2 that I've seen it before sort of like not actually  
3 reviewing the -- for privileged documents. But do you  
4 have examples where the privilege review was limited,  
5 like on the metadata?

6 MR. OH: On the metadata front, I will say that  
7 folks in our section have used that approach.

8 THE COURT: Okay.

9 MR. OH: It's been reciprocal, though. It's  
10 been stipulated to by the parties. I don't know of an  
11 instance where a court has ordered it at the objection of  
12 a party. I'll put it that way. So that's why I  
13 approached Mr. Speth with that idea first. There have  
14 also been instances where the parties have just  
15 stipulated not to do logs at all. And so parties can do  
16 that by stipulation, but, again, I don't know that a  
17 court has ever ordered it.

18 There is a third option that we discussed about  
19 category-based privilege logging and review and just sort  
20 of excluding certain populations and I have seen cases  
21 where courts have ordered --

22 THE COURT: Yeah.

23 MR. OH: -- that sort of (inaudible). That  
24 said, I mean, I take Mr. Speth's point. Like his side  
25 has done all the work, right? So I don't want to be here

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1 imposing a position where it doesn't -- I want to be fair  
2 where it's reciprocal on both sides. So, you know, I  
3 think that's why we're proposing these alternatives -- as  
4 alternatives (inaudible) just sort of the timing issue is  
5 the big thing right now.

6 THE COURT: Right. Okay. And then I have some  
7 questions for you, but anything you want to say  
8 (inaudible)?

9 MR. SPETH: Yeah, just a couple things. I  
10 mean, one, it's not so much -- I mean, it's easy to think  
11 about this in terms of a privilege log, but it's really  
12 that there are 50,000 documents that may not be  
13 privileged or portions of those documents may not be  
14 privileged and they should be produced. You know, our  
15 own privilege review, we also, of course, used keywords  
16 to screen productions before they went out, held them  
17 back, and then did a privilege review of those documents,  
18 a lot of which -- you know, many thousands of which ended  
19 up being produced and are relevant documents in the case.  
20 So it's not just about the form of a log.

21 And then the other thing I would just say is I  
22 don't think this is -- this shouldn't be viewed as sort  
23 of an all-or-nothing, well, if we put them to the burden  
24 of -- which is just their burden under Rule 26, of  
25 reviewing these documents and producing the nonprivileged

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1 ones, you know, it should take five months. I think  
2 there has to be some -- there should be some steps that  
3 the Government does to reduce this population that needs  
4 to be manually reviewed and subject to clawback, increase  
5 resources, prioritize, you know, documents such that, you  
6 know, the bulk of it is coming out within a reasonable  
7 period of time, the higher -- you know, the custodians  
8 that may be deposed are coming out. I think there are  
9 steps the Government could take to -- you know, it's sort  
10 of like the 80/20 rule -- to get most of this out, you  
11 know, in a month or so.

12 THE COURT: Mm-hmm. Okay. And just out of  
13 curiosity, for the baseline of this, like did the parties  
14 already agree, like not -- to not log like post-filing  
15 privilege communications and things like that? Was that  
16 like part of the --

17 MR. SPETH: We haven't discussed -- we -- I  
18 mean, we only produced -- we had a cutoff date of our  
19 production and I had assumed -- when it was prior to  
20 filing and I assumed we would log up through that date.

21 THE COURT: Okay.

22 MR. SPETH: But I haven't --

23 MR. OH: I think we have discussed the idea of  
24 just producing without the logs, like doing the privilege  
25 review, but not necessarily doing the logs.

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1 THE COURT: Mm-hmm.

2 MR. OH: That could help a little bit. I mean,  
3 it doesn't help tremendously, but that was sort of  
4 something that was always on the table.

5 THE COURT: Okay.

6 MR. OH: So it could help like on the tail end  
7 after the privilege review is done, you know, populating  
8 and making the log, you know, extends things.

9 THE COURT: Yeah. So are there -- like do you  
10 have a sense of like are there custodians who like -- or  
11 some way of limiting what would need to be logged or  
12 whether these categorical logs would be possible or  
13 anything along those lines?

14 MR. SPETH: I mean, we haven't discussed any  
15 proposals yet. I raised to Meen Geu -- to Mr. Oh that I  
16 would be comfortable not logging, you know,  
17 communications with the Department of Justice -- between  
18 the Department of Energy and the Department of Justice  
19 given the timing. I mean, I don't truthfully think that  
20 that will limit our universe by much. So I think we'd  
21 have to understand sort of more about who the custodians  
22 are and, you know, what their proposed categories are in  
23 terms of whether there might be entire -- you know,  
24 whether we could use a categorical log.

25 THE COURT: So I guess that brings me back to

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1 the metadata question. So on the metadata proposal, are  
2 you concerned about it in principle or are you concerned  
3 about the sort of limit on the -- like Mr. Oh's proposal  
4 had like a limit on the number of documents you could  
5 then request once you've seen the metadata? Is it a  
6 limit or is it a --

7 MR. SPETH: It's both.

8 THE COURT: Okay.

9 MR. SPETH: I mean, certainly, the limit, but  
10 also, I mean, it's basically imposing on us the burden  
11 and it's imposing on us a burden that I don't even think  
12 we can do. I mean, I don't think we would have the  
13 information from a metadata log to try to, you know,  
14 divine the content of these communications or identify  
15 the ones that we would want them to take a more manual or  
16 -- you know, to review. And the Government has produced  
17 -- has done no responsiveness review in this case.

18 So starting in January 2023, when the  
19 Government went back to do all of the collection --  
20 recollection and production, they have not been doing a  
21 responsiveness review. So they produce eight million  
22 documents to us without any responsiveness. They've put  
23 that burden entirely on us, which we expected in the vein  
24 of moving the case along as quickly as possible. And so  
25 we don't think that there should be an additional burden

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1 here put on us, particularly because I don't think we'd  
2 be able to successfully understand enough about these  
3 documents from a metadata log.

4 MR. OH: Can I respond to that, Judge Silfen?

5 THE COURT: Sure.

6 MR. OH: And I don't want it to be like -- my  
7 understanding -- again, this all predates me, so I don't  
8 know exactly -- is that when we initially produced in  
9 response to the RFPs request for production, that we  
10 tried to cure a -- how we were producing, you know,  
11 foldering the documents that were responsive to each of,  
12 I think, like 100 requests, and we actually tried to log  
13 it that way. And that was viewed by you guys as  
14 deficient. And so I think in the spirit of just like  
15 resolving the issue, you proposed custodians and key  
16 terms and my predecessor agreed to that.

17 But like the fallout of that is it just causes,  
18 you know, a dragnet to run through the systems and that's  
19 what causes the eight million documents is we're running  
20 the key terms and the number of custodians that, you  
21 know, you all provided. So that's what's causing this.

22 Now, on the back end, I think -- I wish that  
23 hadn't been done because any time you grow the population  
24 of the production by that size, your privilege  
25 withholdings grow by a correlate of size and that's what



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1 led to the two million. So I'm not like, you know,  
2 saying -- it's just a problem right now and it's my  
3 problem, right? I have to deal with it. I've said that  
4 repeatedly. But it's -- it's going to take time based on  
5 the size of the production and the number of custodians,  
6 how expansive it was across three agencies. So that's  
7 all I wanted to add.

8 THE COURT: Do you have a sense of the  
9 custodian -- like the custodians you care more about or  
10 less about? I don't need names, but just --

11 MR. SPETH: I mean, I think it's difficult  
12 because, I'll be honest, I think both parties are trying  
13 to -- given how long it's been, are trying to limit the  
14 universe of depositions that need to happen. I think  
15 there's going to be a lot of importance on the 30(b)(6)  
16 witness for the agency and for EPA, such that both sides  
17 can try to limit the number of fact witnesses. So I  
18 think it's difficult in that respect. I think that's  
19 very complicating in terms of, you know, understanding --  
20 being able to exclude agency documents based on certain  
21 custodians. That said, we have exchanged names of, you  
22 know, likely trial witnesses in an effort to identify who  
23 -- you know, who we need to depose.

24 THE COURT: Mm-hmm.

25 MR. SPETH: And we're -- you know, I think

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1 we're both in the 10 to 15 sort of witness ballpark in  
2 terms of likely -- you know, likely witnesses that would  
3 need to be deposed.

4 THE COURT: So if you got sort of the documents  
5 from those witnesses first or -- would that be useful or  
6 is that --

7 MR. SPETH: I think we could prior --  
8 potentially, we could prioritize those, but we would need  
9 to have the ability to reopen the depositions of the  
10 30(b)(6) and really, you know, other witnesses based on,  
11 I think, a production of documents. I mean, any -- I  
12 think any -- to the extent where we're being required to  
13 go forward with depositions prior to their completing  
14 this process, we will ask for the ability to reopen  
15 depositions at the Government's expense. That, I think,  
16 is sort of a minimum safeguard that we should be  
17 afforded.

18 THE COURT: Okay. Mr. Oh, any thoughts for you  
19 on --

20 MR. OH: On that? I would have to resist that  
21 based on budget constraints. I think --

22 THE COURT: I mean, it sounds like that  
23 everybody wants to finish the production first.

24 MR. OH: If that's the risk, yeah, I would say  
25 we need to finish the documents first.

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1                   THE COURT: Okay. So I guess I'm -- I mean,  
2 unless the parties can agree on a way to limit the  
3 universe of documents in one of the ways the Government  
4 suggests or in some other way, I mean, I'm inclined to  
5 have DOJ review all the documents and set a date for that  
6 review to be done, probably later than May 15th. That  
7 sounds like it's not feasible.

8                   But, I mean, does anybody have a date -- so, I  
9 mean, my initial inclination was maybe sometime like the  
10 end of June, but I'm interested in both sides' reactions.

11                  MR. OH: Yeah, I called Mr. Speth yesterday and  
12 I -- you know, after running through our calculations  
13 with the number of reviewers that DOE could help to  
14 assist with the review, again, that went to my  
15 calculation of half their workdays over a number of  
16 weeks. We've got a computation of 17 weeks based on  
17 that. And that was without logs and things like that.  
18 So I said five months. So I told him late September and  
19 that would be September 29th for the completion of the  
20 privilege review.

21                  THE COURT: Okay. And do you -- I mean, if --  
22 well --

23                  MR. SPETH: I mean, that's an eight-month -- a  
24 greater than eight-month delay on an already very delayed  
25 case, in large part because of the Government's prior

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1 collection. And I understand it predated Mr. Oh, but the  
2 Government's prior collection methods and need for re-  
3 collection has already significantly delayed. That would  
4 be an eight-month delay.

5 This is -- I mean, it's -- you know, the  
6 prejudice that's occurring is not theoretical. Three  
7 witnesses have died since this case was filed, one  
8 government witness, two URS witnesses. The Government  
9 has informed us they can't find a key DOE witness. You  
10 know, memories are fading fast and, of course, you know,  
11 there is a significant, you know, financial sum at stake  
12 that, you know, is not being recovered. So there's  
13 tremendous prejudice resulting from this. So that type  
14 of delay, I think is just unacceptable to us. We would  
15 need some -- we would request some greater urgency on the  
16 part of the Government.

17 THE COURT: Okay. Let's think. I'm just  
18 trying to think about the -- I mean, I think until the  
19 end of September sounds like to me.

20 MR. OH: Judge Silfen, I am surprised to hear  
21 him saying that. I mean, one thought, if the end goal is  
22 to get the entire discovery process done sooner -- I just  
23 -- I've tried everything to get more reviewers. I've  
24 tried to get a contract -- it's just --

25 THE COURT: I mean, the order might help.

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1 MR. OH: It might help. I'm sure it will. But  
2 I'll just -- I have tried.

3 THE COURT: Yeah.

4 MR. OH: Is that if the end goal is to  
5 eventually get this thing, you know, through the  
6 discovery process, summary judgment briefing, there are a  
7 lot of deadlines here where I personally would vastly  
8 prefer that those deadlines be shortened. For example,  
9 you know, we proposed 145 days for depositions and I  
10 think that's a lot, but at the same time I want to be  
11 fair to Mr. Speth. So I'm happy to agree to that. But  
12 if there's any time that could sort of be reduced, some  
13 time could come from there.

14 And then there's other subsequent -- like I  
15 wouldn't take it away from expert discovery, for example,  
16 because I think those reports are going to take some  
17 time. But there are various points in here where I think  
18 we can, you know, take out a little bit and that could  
19 make things a little bit more -- at least on the back  
20 end, if we're looking at the totality of the schedule,  
21 run a little bit quicker.

22 THE COURT: Right. I mean, I guess to go back  
23 to, although neither party liked it at all, the idea of  
24 having depositions going alongside production. I wonder  
25 if there are ways to sort of, you know, figure production

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1 with certain witnesses and then start taking depositions  
2 of those witnesses, I mean, with the caveat, I suppose,  
3 that you may have to reopen that deposition. But  
4 (inaudible) not, right, like if you've got all the  
5 documents from them ahead of time. So I don't --

6 MR. SPETH: I mean, I --

7 MR. OH: No, go ahead, go ahead.

8 MR. SPETH: I think that sort of depends on how  
9 quickly they can get a -- I mean, if they could get 80  
10 percent of the documents out in a month or in six weeks,  
11 I -- and I'm sorry, I don't under -- I can't follow the  
12 math. I mean, if you can review 20 documents an hour,  
13 you know, it seems like they should be able to, you know,  
14 move more quickly than five months. But it's -- but if  
15 we could -- you know, if the documents could be largely  
16 produced by the end of -- you know, by mid-June or at the  
17 end of June, as you said, such that we could go forward  
18 with a right to reopen if something is -- material is  
19 produced after that, I mean, we could -- that would be  
20 something we could do. But I'd want some assurance that  
21 there was -- that they were actually able to produce the  
22 bulk -- you know, the bulk of it by then.

23 THE COURT: Mm-hmm.

24 MR. OH: I'm looking at 80 percent, I'm still  
25 thinking four months. I mean, that's -- so, look, Judge

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1 Silfen, I think your idea is fine because I think even  
2 when we agreed to this initial schedule setting  
3 substantial production of January 10th, the idea was we  
4 would still have privilege withholdings that would be  
5 trickled out after that January 10th date. And so it  
6 wasn't the thought that you couldn't possibly get a  
7 document after January 10th, while we're in that  
8 deposition time frame. It was just that most of the  
9 stuff would be out.

10 And so I think if we're looking at some overlap  
11 between the deposition period and, you know, trickling  
12 out of documents through this privilege -- you know,  
13 final privilege review process, I think that's fine. And  
14 I don't know what that looks like, but if it's like --  
15 you know, and I don't mind prioritizing custodians or  
16 doing anything of that nature. I can do that. But if  
17 it's, you know, a percentage, like 80 percent of the  
18 privilege review will be done by June, you know, based on  
19 what I'm looking at as the math, I don't see how that's  
20 possible.

21 THE COURT: I mean, the timing is not that  
22 different. If it's the end of June, you know, it's not  
23 four months, but it's two and a half.

24 MR. OH: Just so -- we're not done with TAR  
25 review yet. There was an outstanding FOIA. So our TAR

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1 review was done. There was an outstanding FOIA. Mr.  
2 Speth and I agreed to produce it through discovery rather  
3 than through the FOIA process. We thought the documents  
4 would be out quicker. It would obviously cost his client  
5 less money and we could just be done with it.

6 THE COURT: Mm-hmm.

7 MR. OH: So we threw that back into the TAR.  
8 That was the agreement. So we have to wait for those  
9 documents to be processed. I'm anticipating TAR review  
10 will be done on May 1st.

11 THE COURT: Okay.

12 MR. OH: So they have to be thrown back into  
13 the system, see if it destabilizes the TAR. If it does,  
14 we've got to do a little bit more review. Hopefully, it  
15 doesn't, and I think that's what I'm expecting. So  
16 that's where the TAR stands. But, yeah, the privilege  
17 review of the TAR documents cannot begin until the TAR is  
18 stable.

19 THE COURT: Okay. So why don't we plan on --  
20 why don't we set --

21 MR. SMITH: Your Honor?

22 THE COURT: Oh, yes?

23 MR. SMITH: Can I add one other point of  
24 information?

25 THE COURT: Yes.



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1 MR. SMITH: Throughout this process, especially  
2 in the privilege review that we've been doing, I've been  
3 the primary reviewer. So of those four or five  
4 attorneys, I'm doing the lion's share of the review.  
5 Part of the math also needs to take into account that I  
6 am a military member and I'm going to be going on orders  
7 for 45 to 60 days starting in about a week, which is  
8 going to slow down that process.

9 THE COURT: Okay. I mean, it sounds like then  
10 there -- hopefully, you can get more people for your team  
11 or more people's time, especially if you have multiple  
12 people out.

13 MR. OH: Yeah, I think Mr. Smith was the full-  
14 time designee for this particular case. We can get like  
15 part-time people and Mr. Smith has a deal where he has  
16 gotten us, you know, four additional to help with this  
17 process. Obviously, there's four DOJ attorneys on this  
18 case. Again, it's going to be hard to devote full-time  
19 with a full, you know, docket of cases going.

20 THE COURT: Mm-hmm.

21 MR. OH: But all the math that we've done  
22 accounts for that sort of -- those sort of limitations.

23 MR. SPETH: And the Department of Justice uses  
24 contract attorneys for review. I understand Mr. Oh has  
25 requested that and it's been denied thus far. But it's

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1 certainly -- I don't think there's anything that would  
2 bar it if it was required.

3 THE COURT: Okay.

4 MR. OH: I can say that was the first thing I  
5 asked for and it was quickly, uncomfortably fast. The  
6 budget -- I don't want to say too much on this, but the  
7 budget constraint is very serious right now.

8 THE COURT: Mm-hmm.

9 MR. OH: You can -- yeah, I'll just leave it at  
10 that.

11 THE COURT: Yeah. Okay. Well, I guess -- I'm  
12 still inclined to set a June 28th date to -- for the  
13 Government to complete or substantially -- I don't know  
14 what the right sort of way to phrase it is to both, you  
15 know -- if the Government like absolutely needs the  
16 flexibility to extend it, we can, but I don't want -- but  
17 I want DOJ to sort of put the resources it needs to put  
18 into getting it done by then. So I don't know what the  
19 best way to like frame that is.

20 MR. OH: I don't know either, Judge Silfen. I  
21 don't want to propose anything and then, you know, have  
22 it sort of --

23 THE COURT: Right, right. Okay. Any thoughts  
24 on your end, Mr. Speth?

25 MR. SPETH: Sorry, I was just looking at the

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1 calendar. I think that's ten weeks from now. I mean,  
2 that seems like a very long time that they should be able  
3 to accomplish this. The only thing I would ask for is  
4 that there is -- and we can do this -- I can do this; I  
5 don't want to burden you -- but there should be some  
6 safeguards in terms of understanding how they're going to  
7 accomplish this to make sure we're not back here at the  
8 end of June and it hasn't been accomplished, I mean, in  
9 terms of, you know, what the pace is going to be and how  
10 -- how they're going to get through this amount.

11 THE COURT: And I want to make sure that the  
12 parties are working together on it and if there's, you  
13 know, ways to streamline it, things that you can sort of,  
14 you know, either, you know, skip -- well, like skip  
15 privilege logging for various specific people or, you  
16 know, the categorical logging or anything where, you  
17 know, you can sort of accommodate because it's --  
18 obviously, DOJ does have constraints and so like anything  
19 you can do to sort of work together on that would be  
20 good. I mean, I don't want to come back here at the end  
21 of June and, you know, it's almost done, but whatever. I  
22 don't want to deal with that again.

23 MR. SPETH: Understood.

24 THE COURT: Okay. So I think what then --  
25 well, would you prefer to send me another status report

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1 after working out dates beyond that or do you want me to  
2 just issue an order with the additional 145 days beyond  
3 that and the rest of the schedule just extended by the  
4 same amount?;

5 MR. SPETH: That would be our request -- our  
6 preference.

7 MR. OH: I think we'd be agreeable to that,  
8 just tacking it on the end.

9 THE COURT: Okay. So we'll do that. So, yeah,  
10 so I can just issue an order with new dates and add --  
11 yeah, whatever number of days. It may vary a little bit  
12 based on like weekends and things like that. But if  
13 that's okay with the parties, I'll just issue a  
14 (inaudible) order today or --

15 THE CLERK: (Inaudible).

16 THE COURT: Yeah, today. With those new  
17 deadlines.

18 Anything else that we should talk about while  
19 we're here?

20 MR. SPETH: I guess my only question is how  
21 we should -- would it be helpful to the Court to  
22 have status reports between now and the 28th with just  
23 the normal -- we're doing a monthly, but should we do  
24 it more frequently, should we -- I think that they  
25 usually are sort of middle of the month. So I guess

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1 we just did --

2 THE COURT: Mm-hmm.

3 MR. OH: They're in April, May, June.

4 MR. SPETH: So I guess we could --

5 THE COURT: Would it be helpful to have more?

6 We can say every two weeks until the end of June if

7 that's useful.

8 MR. OH: I am personally okay with once a

9 month, but --

10 THE COURT: I mean, you're welcome to -- you're

11 welcome to submit one early if there's an issue that

12 comes up.

13 MR. OH: Yeah, I think Mr. Speth and I have had

14 frequent communication. So it's not like, you know, if

15 there's any -- I think the big thing is we're trying to

16 avoid any surprises. So there have been a lot of updates

17 interpersonally between us. So I think that makes sense.

18 If something does arise that changes the trajectory, we

19 can sort of voluntarily file something.

20 Judge Silfen, if it's not too much of a point,

21 I know this -- you've already said June 28th, but even

22 like a modicum of extra time would be super-helpful. As

23 things currently stand, the fact discovery cutoff was

24 July 3rd. Could we just possibly get that extra five

25 days for this, you know, substantial whatever -- you

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1 know, this new production -- privilege or new production  
2 deadline, just right before the July 4th holiday? It's a  
3 little bit extra time, but I promise you it would be  
4 tremendously helpful on our end.

5 THE COURT: That's fine. Okay, yes, that's  
6 fine, July 3rd.

7 Okay. (Inaudible) calculate the dates  
8 (inaudible).

9 MR. SPETH: I don't know whether it's implicit  
10 or not, but, I mean, I would hope -- and we can talk  
11 about this in our status reports -- but that the  
12 Government would produce, you know, on a rolling basis,  
13 that it's not going to be a massive production on July  
14 3rd, but as documents -- if and when documents are  
15 identified as nonprivileged, they're produced at some  
16 regular interval.

17 THE COURT: I think -- yeah, I think that makes  
18 sense. I mean, I'm happy to put that in the order.

19 MR. OH: Yeah, we'll continue on the  
20 trajectory. We've been trying to do it between every one  
21 to two weeks.

22 THE COURT: Yeah, great. Okay. That works.  
23 Anything else on anybody's end?

24 MR. SPETH: No, thank you.

25 THE COURT: Okay, all right. Well, thanks for

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1     working collaboratively on the case and I'll hope for a  
2     status...

3                     (Whereupon, the hearing was adjourned.)

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1 CERTIFICATE OF TRANSCRIBER

2

3 I, Elizabeth M. Farrell, court-approved  
4 transcriber, certify that the foregoing is a correct  
5 transcript from the official electronic sound recording  
6 of the proceedings in the above-titled matter.

7

8

9 DATE: 5/10/2024 s/Elizabeth M. Farrell  
10 ELIZABETH M. FARRELL, CERT

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